

ICC Docket Nos. 04-0454 / 0455 / 0456 (consol.) (April 19, 2006), a copy of which is appended hereto as Attachment No. 1, and incorporated by this reference herein.

2. Pursuant to 47 C.F.R. §54.314(d)(6), telecommunications carriers newly designated are eligible for federal high cost support as provided for in 47 C.F.R. §§54.301, 54.305, and 54.307; and Part 36 of Subpart F of Chapter 47, 47 C.F.R. §54.301-54.307, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the required certification that it will use such support only for the provision, maintenance or upgrading of the facilities or service for which the support is intended (in the case of a non-jurisdictional entity) or the state commission files the certification (in the case of a jurisdictional entity) within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. 47 C.F.R. § 54.314.

3. The ICC is the appropriate state regulatory authority, within the meaning of 47 C.F.R. §54.314(c), to certify eligibility for federal support, and has been doing so for Illinois carriers since the certification requirement was enacted in 2001.

4. IVC are telecommunications carriers within the meaning of Section 153(44) of the federal Act, providing commercial mobile service within the meaning of Section 332(d)(1) of the federal Act. At the time of the ICC Order granting ETC status, Counsel for IVC advised ICC Staff that it intended to file certification with the FCC pursuant to 47 C.F.R. §54.314(d). However, the ICC Staff was recently advised that IVC did not file for certification, due to the unexpected death in April 2006 of their FCC counsel.

5. The ICC is in receipt of affidavits executed by IVC officers attesting that IVC will use any high cost support it receives solely for the provision, maintenance or upgrading of the facilities or service for which the support is intended. See Attachment No. 2, appended hereto and incorporated by this reference herein. On September 26, 2006, the ICC certified IVC pursuant to 47 C.F.R. § 54.314 for the year beginning October 1, 2006. See Attachment No. 3, appended hereto and incorporated by this reference herein. However, inasmuch as the ICC entered its order designating IVC as eligible telecommunications carriers on April 19, 2006, the time for the ICC to certify IVC expired on June 19, 2006. The ICC, therefore, hereby requests a waiver of that 60 day requirement in 47 C.F.R. § 54.314(d)(6) for good cause shown.

6. 47 C.F.R. §1.3 provides that:

The provisions of this chapter [47] may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

7. Good cause for such waiver exists in that the ICC's failure to timely certify IVC resulted from its reliance upon IVC's representation and their apparent good faith belief that IVC could self-certify and from the fact that IVC did not request such action in the draft order or other pleadings filed in the docket seeking eligible telecommunication carrier status. By the time IVC were able to determine that they could not self-certify, the 60-day period provided by rule for certification had expired. Good cause for such waiver further exists in that the ICC's failure to timely certify IVC resulted from an apparent administrative oversight inasmuch as IVC are the first eligible

telecommunications carriers designated by the ICC that has ever required certification to receive federal high cost, and it was not clear that IVC could not self-certify. The ICC is putting procedures in place to ensure that future certifications of this nature are made in a timely manner.

8. The public interest, and the purpose of the regulation in question, would be served by the granting of the requested waiver in that IVC seeks high cost support to serve customers in areas where few or no competitive telecommunications choices exist, which federal statutes and rules that permit certification as ETCs of non-ILEC carriers are intended to promote. In addition, the ICC believes that it would be inequitable to deprive IVC of any support to which they are otherwise entitled on the basis of the ICC's grant of ETC status to IVC.

9. No harm or prejudice will result from the grant of the requested waiver.

WHEREFORE, for the reasons stated herein, the Illinois Commerce Commission respectfully requests, pursuant to 47 C.F.R. §1.3, a waiver of 47 C.F.R. §54.314(d)(6), and leave to file out-of-time its certification of Illinois Valley Cellular RSA 2-1 Partnership, Illinois Valley Cellular RSA 2-11 Partnership, and Illinois Valley Cellular RSA 2-111 Partnership as eligible telecommunications carriers for purposes of receiving

federal high cost support during the period from April 19,2006through September 30, 2006, inclusive (attached hereto as Attachment 4).¹

Respectfully submitted,

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January 10,2007

¹ The attached Certification letter **is** submitted herein for filing. Pursuant to **47 C.F.R. §54.314(c)**, the **ICC** **is** also filing this Certification today with the Administrator of the high-cost universal service support mechanism.

ATTACHMENT - 1

ILLINOIS COMMERCE COMMISSION

Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.

04-0454	
04-0455	(Cons.)
04-0456	

DATED: April 19, 2006

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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Valley Cellular RSA 2-I Partnership

Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996. : 04-0454

Illinois Valley Cellular RSA 2-11 Partnership : 04-0455 (Cons.)

Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.

Illinois Valley Cellular RSA 2-III Partnership : 04-0456

Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service Support Pursuant to Section 214(e)(2) of the Telecommunications Act of 1996.

ORDER

By the Commission:

I. PROCEDURAL HISTORY; NATURE AND PURPOSE OF FILING

Illinois Valley Cellular RSA 2-1 Partnership, Illinois Valley Cellular RSA 2-11 Partnership and Illinois Valley Cellular RSA 2-111 Partnership (collectively "IVC" or "Applicants") are holders of cellular licenses issued by the Federal Communications Commission ("FCC").

In the instant proceedings before the Illinois Commerce Commission ("Commission" or "ICC"), each Applicant filed an application, as amended, seeking designation as an Eligible Telecommunications Carrier ("ETC") for purposes of receiving federal Universal Service Support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996, 47 U.S.C. 214(e)(2).

Eventually the three cases were consolidated. Prior to consolidation, petitions for leave to intervene were filed in one of more of the dockets by Illinois Bell Telephone Company ("SBC Illinois"); Tonica Telephone Company; ("Tonica"), McNabb Telephone Company ("McNabb"); the Illinois Independent Telephone Association ("IITA"); Mid-Century Telephone Cooperative, Inc. ("Mid-Century"), Gallatin River Communications L.L.C. ("Gallatin"), C-R Telephone Company ("C-R"), Frontier Communications of Illinois, Inc. ("Frontier - Illinois"), Frontier Communications - Prairie, Inc., ("Frontier - Prairie") and Stelle Telephone Company ("Stelle"). These petitions for leave to intervene were granted.

Pursuant to due notice, prehearing conferences and hearings were held on various dates. Through their respective counsel IVC, SBC Illinois, IITA, Tonica, McNabb, C-R, Stelle, Gallatin, Frontier - Illinois, Frontier - Prairie and the Staff of the Illinois Commerce Commission ("ICC Staff" or "Staff") entered appearances at the hearings. IVC presented the testimonies and exhibits of Michael K. Kurtis, an outside consultant, and Thomas Walsh, General Manager of Marseilles Cellular, Inc., the Network and Operating Partner of IVC.

The Staff presented the testimonies of Jeffrey H. Hoagg, Principal Policy Adviser; Dr. James Zolnierrek, Interim Manager, Policy Department; Samuel S. McClerren, Engineering Analyst; Mark A. Hanson, Rate Analyst; and Marci Schroll, 9-1-1 Program Manager, all of the Telecommunications Division. IITA and certain member companies presented the testimonies of Robert C. Schoonmaker, an outside consultant. SBC Illinois presented rebuttal testimony of James E. Stidham, Jr., Associate Director in Regulatory Planning and Policy.

IVC filed a draft order on December 29, 2005. At a hearing on that day, IITA, SBC Illinois, Gallatin and the Commission Staff indicated, through their respective counsel, that they had no objection to the draft order. Tr. 200-203. On January 5, 2006, the matter was marked "Heard and Taken." A proposed order was issued by the administrative law judge. No exceptions were filed.

II. BACKGROUND

IVC witness Michael Kurtis provided background testimony with respect to the formation of the three IVC Partnerships and the issuance of the cellular licenses for the IVC service area.

The issuance of cellular licenses by the FCC was based on geographic areas. The FCC first awarded licenses to Metropolitan Statistical Areas, as defined by Rand McNally. Those licenses were awarded on the basis of population with the largest MSAs being awarded licenses first. Once all MSAs were licensed, the FCC divided the remaining geographic area of the country into regional rural clusters of counties and defined them as Rural Service Areas ("RSA"). One of those rural service areas was Illinois RSA 2, which is served by the three IVC Partnerships. Illinois **RSA 2** is comprised of Bureau, Putnam, LaSalle, Stark, Marshall, Livingston, Ford and Iroquois Counties.

The FCC awarded two cellular licenses in each geographic area. The A Block license was open to any applicant while the B Block license was open only to traditional telephone companies providing local exchange service in the particular market. The IVC license is a B Block license. The FCC awarded RSA licenses by lottery.

In Illinois RSA 2, there were a total of 12 incumbent local exchange carriers ("ILECs") eligible to file for the B Block license that participated in the FCC application process. Nine of those ILECs were small rural telephone companies while the remaining three applicants at the time were larger incumbent local exchange carriers. A settlement was reached whereby RSA 2 would be divided into three separate markets along agreed-upon boundaries, and three separate partnerships were formed to be the licensee of each distinct market.

The rural ILECs collectively received 60% ownership while Contel received a minority 40% ownership of the 2-1 Partnership. Centel received a 40% minority ownership of the 2-11 Partnership and Ameritech received a 40% minority ownership of the 2-III Partnership. Marseilles Cellular, Inc, an affiliate of Marseilles Telephone Company and Metamora Telephone Company, is both the Network Partner and the Operating Partner for each of the three IVC Partnerships. While each IVC Partnership maintains its own customer base, subscribers receive "home" coverage throughout the three sub-markets that collectively comprise the RSA 2 market.

The IVC RSA 2-1 Partnership provides commercial mobile radio service ("CMRS") in Illinois RSA 2-I, Market No. 395B(1), which is comprised of portions of Bureau, Putnam and La Salle counties pursuant to its FCC cellular license (Call Sign KNKN583). The FCC licenses cellular systems on the basis of a Cellular Geographic Service Area ("CGSA") and not on a per-site basis.

The CGSA is determined by applying FCC formulas to the operating parameters of a licensee's cell sites to determine the Service Area Boundary ("SAB") for each cell site, and then using the composite of the area encompassed within those SABs, as limited by the particular market boundary, to define the CGSA. Accordingly, only cell site locations with SABs that are used to form a part of the CGSA are listed on the FCC license. Additional cell sites having SABs that are wholly contained within the CGSA are not listed on the FCC license.

Within the area proposed for ETC designation in its Application, the IVC RSA 2-1 Partnership operates 18 individual cellular base stations ("cell sites") and provides service utilizing analog ("AMPS"), time division multiple access ("TDMA") digital technology and code division multiple access ("CDMA") digital technology. While this proceeding was pending, the IVC RSA 2-1 Partnership constructed and began operating an additional cell site.

The IVC RSA 2-11 Partnership provides CMRS in Illinois RSA 2-11, Market No. 395B(2), which is comprised of Marshall county as well as portions of Bureau, Putnam,

La Salle, Stark and Livingston counties pursuant to its FCC cellular license (Call Sign KNKN582). Within the area proposed for ETC designation in its Application, the IVC RSA 2-11 Partnership operates seven individual cellular base stations, or cell sites), and provides service utilizing AMPS, TDMA digital technology and CDMA digital technology. One of those cell sites is located just outside of the IVC FCC-licensed service area and is owned by the IVC RSA 2-1 Partnership but is used to provide service to the northeastern corner of the IVC proposed ETC service area. While this proceeding was pending, the IVC RSA 2-11 Partnership constructed and began operating an additional cell site.

The IVC RSA 2-11 Partnership provides CMRS in Illinois RSA 2-111, Market No. 395B(3), which is comprised of Ford and Iroquois counties as well as a portion of Livingston county pursuant to its FCC cellular license (Call Sign KNKN581). Within the area proposed for ETC designation in its Application, the IVC RSA 2-III Partnership operates 13 individual cellular base stations (cell sites) and provides service utilizing AMPS, TDMA digital technology and CDMA digital technology. While this proceeding was pending, the IVC RSA 2-III Partnership constructed and began operating an additional cell site.

The IVC network consists of a mobile switching office, identical in most respects to a traditional LEC end-office, and cell sites described as somewhat analogous to traditional LEC remote switching offices. The switch that serves the consolidated IVC network is fully redundant. The switch has its own battery back-up plant and is further backed-up with an emergency generator.

The 19 cell sites in IVC RSA 2-I are operated in conjunction with the seven cell sites in the IVC RSA 2-11 market and the 13 cell sites in IVC RSA 2-111 as part of a single network. The IVC cell sites are also redundant and equipped with battery back-up plants. The cell sites are also equipped with receptacles and manual transfer switches which enable IVC to take a portable generator to any cell site that experiences an extended power failure and "plug-in" a backup generator to recharge the battery plants.

Certain of the cell sites also serve as part of the consolidated network microwave "backbone" used for concentrating and carrying traffic between the various IVC cell sites and the IVC mobile switching office. These cell sites have dedicated generators and automatic transfer switches.

III. STATUTORY AUTHORITY; ETC REQUIREMENTS

A. Introduction

As stated above, each of the IVC Partnerships seeks designation as an Eligible Telecommunications Carrier for purposes of receiving federal universal service support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996. Section 214(e) of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 214(e) (the "Federal Act"), provides in pertinent part as follows:

(e) PROVISION OF UNIVERSAL SERVICE, —

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.--A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier): and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.-
- A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

...

(4) RELINQUISHMENT OF UNIVERSAL SERVICE. A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier

will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) SERVICE AREA DEFINED.--The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

Under Section 214(e) of the Federal Act, a telecommunications carrier may be designated as an ETC and thereby receive universal service support so long as the carrier, throughout its service areas: (a) offers the services that are supported by federal universal service support mechanisms under Section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's service (including services offered by another ETC); and (b) advertises the availability of and charges for such services using media of general distribution.

Congress granted to state commissions the ability to designate a common carrier as an ETC, as set forth in Section 214(e)(2) of the Federal Act and implemented through Section 54.201(b) of the FCC's Rules, 47 CFR 54.201(b). Section 54.201(b) states that the Commission shall, on its own motion or upon request, designate a common carrier an ETC so long as the carrier meets the requirements of Section 54.201(d) of said rules, which restates the requirements found in Section 214(e)(1) of the Federal Act.

Section 214(e)(2) of the Federal Act and Section 54.201(c) of the FCC'S Rules, 47 CFR 54.201(c), state that upon request and consistent with the public interest, convenience and necessity, the state Commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an ETC for a service area the Commission designates, provided each additional requesting carrier satisfies Section 214(e)(1) of the Act and Section 54.201(d) of the FCC's Rules. Before designating an additional ETC for an area served by a rural telephone company, the state Commission shall find that such designation is in the public interest.

Pursuant to Section 54.101(a) of the FCC's Rules, 47 CFR 54.101(a), the following services and functions are to be offered by an ETC:

- (a) Voice grade access to the public switched network;

- (b) Local usage;
- (c) Dual tone multi-frequency signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange service;
- (h) Access to directory assistance; and
- (i) Toll limitation for qualifying low-income consumers.

ETCs must also provide Lifeline and Link-Up services and advertise the availability of Lifeline and LinkUp services in a manner reasonably designed to reach those likely to qualify for such services. 47 C.F.R. §§54.405; 54.411.

Section 254(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. Section 254(b), defines the "Universal Service Principles" to guide regulatory bodies in preserving and advancing universal service. Section 254(b) of the Federal Act provides as follows:

(b) UNIVERSAL SERVICE PRINCIPLES.--The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

(1) QUALITY AND RATES.--Quality services should be available at just, reasonable, and affordable rates.

(2) ACCESS TO ADVANCED SERVICES.--Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) ACCESS IN RURAL AND HIGH COST AREAS.--Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

(4) EQUITABLE AND NONDISCRIMINATORY CONTRIBUTIONS.-- All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

(5) SPECIFIC AND PREDICTABLE SUPPORT MECHANISMS.--There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

(6) ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS, HEALTH CARE, AND LIBRARIES.--Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) ADDITIONAL PRINCIPLES.--Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act.

Pursuant to Section 254(b)(7), the FCC adopted the following additional principle regarding competitive neutrality:

COMPETITIVE NEUTRALITY -- Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another. Report and Order in CC Docket No. 96-45, FCC 97-157 Issued May 8, 1997 (¶¶ 47).

B. FCC's ETC Order

While the instant ICC dockets were pending, the FCC issued a Report and Order ("FCC ETC Order") clarifying existing requirements, and imposing additional requirements, which the FCC will use in evaluating applications for ETC designation on a going forward basis. Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report* and Order, FCC-05-46 (March 17, 2005). In Paragraph 1, the FCC referred to these additional guidelines as "the minimum requirements" it would use in designating a carrier as an ETC, and urged that these procedures serve as guidelines for state commissions to follow in their evaluation of ETC applications properly before those commissions. These additional guidelines are codified in 47 CFR §54.202.

State commissions are not bound by the guidelines in the FCC's ETC Order when they evaluate ETC applications. *Id.* at ¶¶58-64.

In the instant ICC proceedings, Staff and SBC Illinois witnesses testified that it would be appropriate for the Commission to analyze the IVC ETC applications under the guidelines in the FCC's ETC Order. IVC presented evidence intended to allow for such analysis.

Generally speaking, the guidelines in Paragraph 20 of the FCC's ETC Order require that the ETC applicant demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area;

(2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.

More specifically, the guidelines in the FCC's ETC Order require the following:

An ETC Applicant shall commit to provide service throughout **its proposed** designated service area to all customers making a reasonable request for service. 47 CFR §54.202(a)(1)(i).

The FCC explained the requirement more fully in Paragraph 22 of its ETC Order as follows:

[W]e agree with and adopt the Joint Board recommendation to establish a requirement that an ETC applicant demonstrate its capability and commitment to provide service throughout its designated service area to all customers who make a reasonable request for service. . . . If the ETC's network already passes or covers the potential customer's premises, the ETC should provide service immediately.

In those instances where a request comes from a potential customer within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. We believe that these requirements will ensure that an ETC applicant is committed to serving customers within the entire area for which it is designated. If an ETC applicant determines that it cannot serve the customer using one or more of these methods, then the ETC must report the unfulfilled request to the Commission within 30 days after making such determination.

An ETC Applicant shall submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. 47 CFR §54.202(a)(1)(ii).

The FCC explained the requirement more fully in Paragraph 23 of its ETC Order as follows:

[W]e require an applicant seeking ETC designation from the Commission to submit a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation. Specifically, we require that an ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area. The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support.

This showing must include: (1) how signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements. To demonstrate that supported improvements in service will be made throughout the service area, applicants should provide this information for each wire center in each service area for which they expect to receive universal service support, or an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of supported services in that area. We clarify that service quality improvements in the five-year plan do not necessarily require additional construction of network facilities.

An ETC Applicant shall demonstrate its ability to **remain functional in emergency situations**. 47 CFR §54.202(a)(2).

The FCC explained the requirement more fully in Paragraph 25 of its ETC Order as follows:

Specifically, in order to be designated as an ETC, an applicant must demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. We believe that functionality during emergency situations is an important consideration for the public interest.

An ETC Applicant shall demonstrate that it will satisfy applicable **consumer protection** and service quality standards. 47 CFR §54.202(a)(3).

The FCC explained the requirement more fully in Paragraphs 28 of its ETC Order as follows:

We find that an ETC applicant must make a specific commitment to objective measures to protect consumers. Consistent with the designation framework established in the Virginia Cellular *ETC* Designation Order and Highland Cellular *ETC* Designation Order and as suggested by commenters, a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant seeking designation before the Commission. We will consider the sufficiency of other commitments on a case-by-case basis. . . . In addition, an ETC applicant, as described *infra*, must report information on consumer complaints per 1,000 handsets or lines on an annual basis.

In Paragraph 31 of its ETC Order, the FCC further stated, "Therefore, states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with section 214 and 254 of the Act to all ETCs in order to preserve and advance universal service."

An ETC Applicant shall demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation. The FCC has not adopted a specific local usage threshold. FCC ETC Order at Para. 32; 47 CFR §54.202(a)(4).

An ETC Applicant shall certify that the FCC may require it to provide equal access to long distance carriers if no other ETC is providing equal access within the service area. FCC ETC Order at Para 35; 47 CFR §54.202(a)(5).

The FCC has imposed certain reporting requirements in connection with the annual certification of ETCs. 47 CFR §54.209.

As indicated above, before designating an additional ETC for an area served by a rural telephone company, the state Commission must find such designation to be in the public interest, 47 U.S.C. Section 214(e)(2). In its ETC Order, Paragraph 40, the FCC clarified the public interest analysis for ETC designations by adopting the fact-specific public interest analysis developed in prior orders.

The FCC acknowledged that Congress did not establish specific criteria to be applied under the public interest test. The FCC stated that the public interest benefits of a particular ETC designation must be analyzed in a manner that is: (1) consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; (2) ensuring the availability of quality telecommunications services at just reasonable and affordable rates; and (3) promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high cost areas.

In cases before the FCC, the FCC stated that it would first consider a variety of factors in the overall ETC determination, including an examination of the benefits of

increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering. Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the FCC said it will also conduct a "creamskimming" analysis that compares the population density of each such wire center in which the ETC applicant seeks designation against that of all wire centers in the study area in which the ETC applicant does not seek designation. FCC ETC Order at Para 41; 47 CFR §54.202(c))

The FCC declined to adopt a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund, but it did identify the level of federal high-cost per-line support in a given wire center as one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in that wire center. ETC Order at Para 54-55.

It is clear from the FCC's ETC Order that the burden of proof rests with the ETC applicant. IVC draft order at 12. With respect to the public interest evaluation, the FCC stated, in paragraph 44, "In determining whether an ETC has satisfied these criteria, the Commission places the burden of proof upon the ETC applicant."

The FCC stated its belief that Section 214(e)(2) "demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law." The FCC noted, in paragraph 61, that states "are particularly well-equipped to determine their own ETC eligibility requirements." In the instant docket, The IITA and ICC Staff witnesses proposed additional criteria, in some circumstances beyond those in the FCC's ETC Order, to meet the public interest, and Staff has recommended that those commitments be treated as conditions of the Commission's grant of ETC status.

In addition, the ETC Order recognizes, in paragraph 72, that "state commissions possess the authority to revoke ETC designations for failure of an ETC to comply with the requirement of section 214(e) of the Act or any other conditions imposed by the state."

C. Parties' Positions

According to IVC, since the instant dockets are cases of first impression before this Commission, IVC presented evidence intended to allow for the analysis of its ETC proposals under the guidelines in the FCC's ETC Order. IITA, the ICC Staff and SBC witnesses testified that it would be appropriate for the Commission to analyze the IVC applications under the guidelines in the FCC's ETC Order. IVC draft order at 13.

Given the discretion granted to state commissions in evaluating an ETC application Staff witness Jeff Hoagg provides the following rationale for following the federal guidelines in this matter in his direct testimony, Staff **Ex.** 1.0 at 7:

The requirements of the ETC Order are 'permissive' and are not binding upon this Commission in its evaluation of any application for ETC status. However, the FCC strongly encourages states to utilize the analyses and requirements contained in the ETC Order. Among other things, this would achieve a reasonable level of consistency in treatment of ETC applications across the nation. This argument, and others raised by the FCC in support of state utilization of its ETC Order requirements are, in my opinion, persuasive. In my opinion, the FCC requirements are, for the most part, appropriate and reasonable. Had the FCC not issued its ETC Order, I believe the Commission should have and would have determined to apply standards and requirements similar to those set forth in the ETC Order.

He further testified on pages 10-12:

In my opinion there are two overarching reasons to impose upon new ETC applicants obligations identical or similar to those imposed by the FCC. The first is to achieve better "targeting" of universal service support. The ETC Order requirements will help ensure that universal service support flows to uses that will directly benefit customers in these rural areas. This is the essence of the FCC's "five year plan" requirement, which is intended to ensure that universal service support received by a newly designated ETC is invested to upgrade, improve or extend facilities in ways that will directly benefit customers. I consider such a five-year investment plan, or an acceptable alternative, an essential 'bedrock' requirement for ETC designation for any new entrant.

The second compelling rationale is that these requirements will help ensure that customers in rural areas continue to have protections reflecting their unique circumstances, even as increased competitive entry is facilitated through new ETC designations. It is virtually axiomatic that competitive entry into the serving territories of existing ILECs will financially weaken these incumbent carriers to some (unknown) extent. The Commission must recognize that this is a largely unavoidable corollary to receipt of universal service funding by new entrants. This funding will facilitate new entrants' efforts to win customers from incumbent ILECs. In contrast to larger incumbent carriers, rural incumbent carriers generally have fewer resources to draw upon to offset such customer losses. Thus, increased competitive entry ultimately is accompanied by some danger that some incumbent rural carriers will not be able to fully maintain their traditional provider of last resort (POLR) status. The Commission thus should ensure that new entrant ETCs are reasonably well positioned to step into the role of POLR.

I would not suggest that new entrants must be in a position to do so from day one of receiving universal service support. Rather, ETC

obligations should be formulated, at least in part, to assist the newly designated ETC to generally prepare to undertake POLR obligations if needed in the future. I believe this is a fundamental objective of obligations contained in the FCC's ETC Order. This Commission's ETC requirements also should be designed to advance this basic objective.

D. Commission Conclusions

First, the Commission finds that in evaluating IVC's proposals for ETC designations, the minimum requirements to be met are the federal guidelines identified above. The Commission also finds that the FCC's ETC Order provides an appropriate analytical framework for considering ETC designation and for establishing whether IVC has shown its application is in the public interest. Furthermore, the IVC entities, as the applicants for ETC designation, bear the burden of proof to show that they have met each of the elements required for ETC designation and that such designation is in the public interest.

As discussed above, Section 214(e)(2) of the 1996 Act provides as follows:

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, . . . designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, **so** long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for *an* area served by a rural telephone company, the State commission shall find that the designation is in the public interest. (Emphasis added)

Thus, the 1996 Act contemplates, at least for rural telephone companies, a public interest analysis for each study area before an additional ETC may be designated for an area served by a rural telephone company. That is, the Commission has the responsibility to analyze the public interest for each individual rural telephone study area. As the FCC stated in paragraph 43 of its recent ETC Order:

[A]lthough we adopt one set of criteria for evaluating the public interest for ETC designations in rural and non-rural areas, in performing the public interest analysis, the Commission and state commissions may conduct the analysis differently, or reach a different outcome, depending upon the area served. For example, the Commission and state commissions may give more weight to certain factors in the rural context than in the non-rural context and the same or similar factors could result in divergent public interest determinations, depending on the specific characteristics of the proposed service area, or whether the area is served by a rural or a non-rural carrier.

In conducting an evaluation for each study area, the Commission may appropriately consider such factors as comparisons to the LEC's local service offerings, the extent of competition in each area, IVC's existing service coverage and IVC's plans for future enhancements, rather than focusing on IVC's total statewide plans. Significantly, IVC has accepted Staffs position on the study area basis of the public interest analysis and has provided its testimony in a manner intended to allow that analysis. IVC Ex. 7.0 at 24-25.

The Commission is also mindful that that any ETC could, in fact, become a provider of last resort. That consideration, too, makes the FCC's ETC Order an appropriate baseline for consideration. Specifically, Section 241(e) of the federal Act states:

A State commission shall permit an ETC to relinquish its designation as such a carrier in any area served by more than one ETC. Any ETC that seeks to relinquish its ETC designation for an area served by more than one ETC shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an ETC to cease providing universal service in an area served by more than one ETC, the State commission shall require the remaining ETC or ETCs to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to the remaining ETC or ETCs to permit the purchase or construction of adequate facilities by any remaining ETC. The state commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

As Mr. Hoagg observed on page 13 of his direct testimony, Staff Exhibit 1.0:

. . . [Section 241(e)] illustrates a basic precept of the 1996 Act concerning ETC status that is advanced by the FCC ETC Order. Accepting ETC designation is a weighty commitment. ETC designation is about more than simply receiving universal service funds if a carrier can show that it will provide rural customers with more choice in services. Section 214(e) effectively conveys the following message: once you're in, you can't simply opt out, as in a competitive market devoid of universal service support. Section 214(e) reflects the fact that rural customers require special consideration and requires that regulators should ensure they get it.

Section 254(f) explicitly allows "States [to] adopt regulations not inconsistent with the [FCC's] rules to preserve and advance Universal Service." *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999) (overturning a portion of FCC's universal service order that attempted to prohibit a state commission's imposition of additional ETC requirements). Consistent with Staffs testimony, it would be appropriate to consider the imposition of more stringent obligations than those